


# Standard Precision and Standard Products Sites, Wichita, Kansas

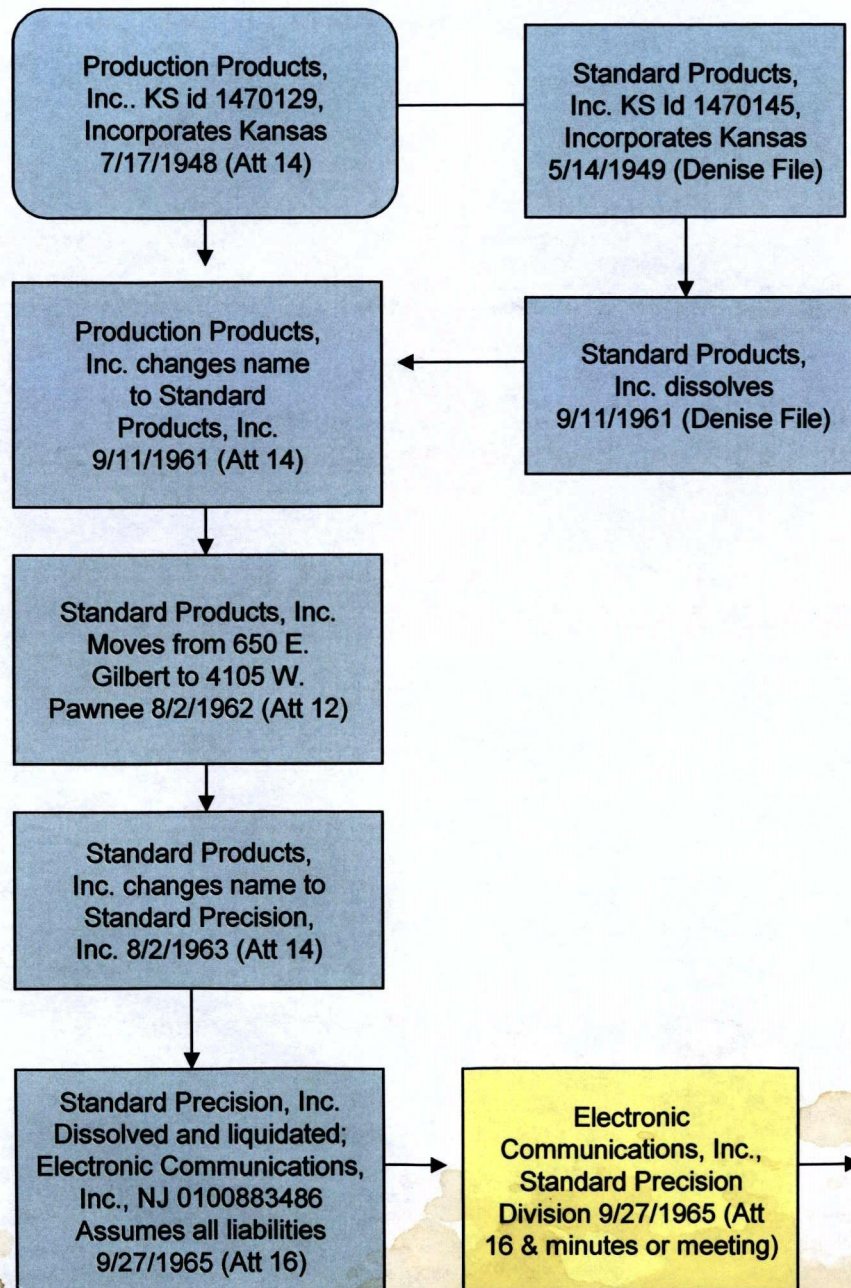
## NCR Corporation's Presentation to EPA, Region 7

Kansas City, KS

November 10, 2011

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Superfund		
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## I. From EPA General Notice Letter to Raytheon Dated April 27, 2010:

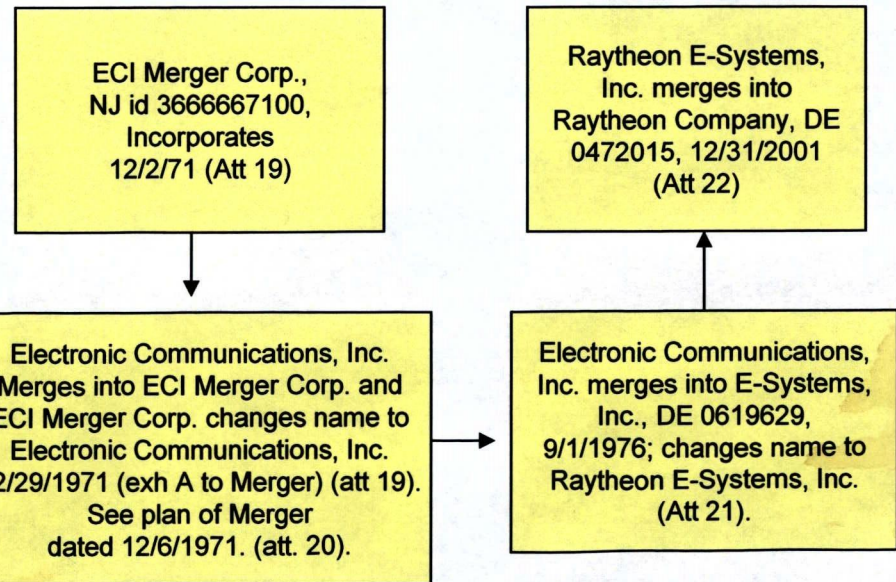


Radiation-Standard Precision, Inc. Superfund Site, Wichita, Ks.

Radiation-Standard Products, Inc. Superfund Site, Wichita, Ks.

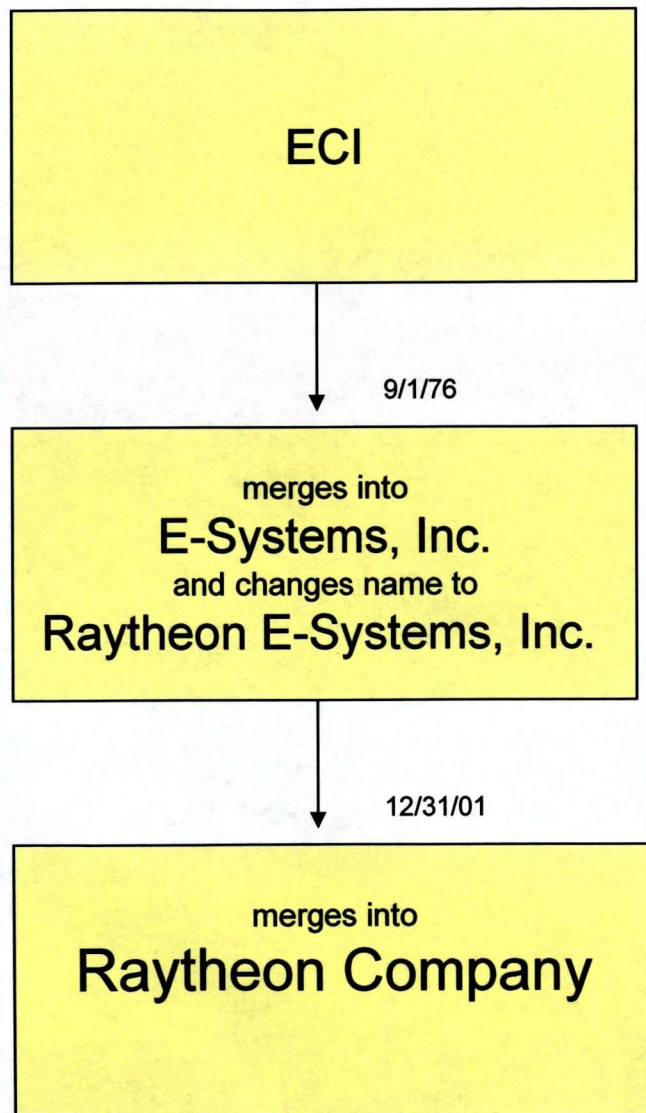
Raytheon Company - Successor to Production Products, Inc. and Standard Products, Inc.

Active and In Good Standing





## II. Raytheon is the Successor to ECI and its Liabilities



## Fundamental Principles:

### Mergers:

"In the case of a merger of one or more corporations into another, where one or more of the corporations ceases to exist and another continues in existence, the latter corporation is liable for the debts, contracts and torts of the former, and this liability is expressly imposed by modern corporation statutes. **So in all jurisdictions today, the surviving corporation has the statutory obligation to assume the duties and liabilities of a constituent corporation.**" 15 Fletcher Cyclopedic of the Law of Corporations, § 7121 (2008).

- By the series of mergers, Raytheon has assumed the liabilities of ECI, one of its "constituent" corporations.

### Conveyance of Liability under CERCLA:

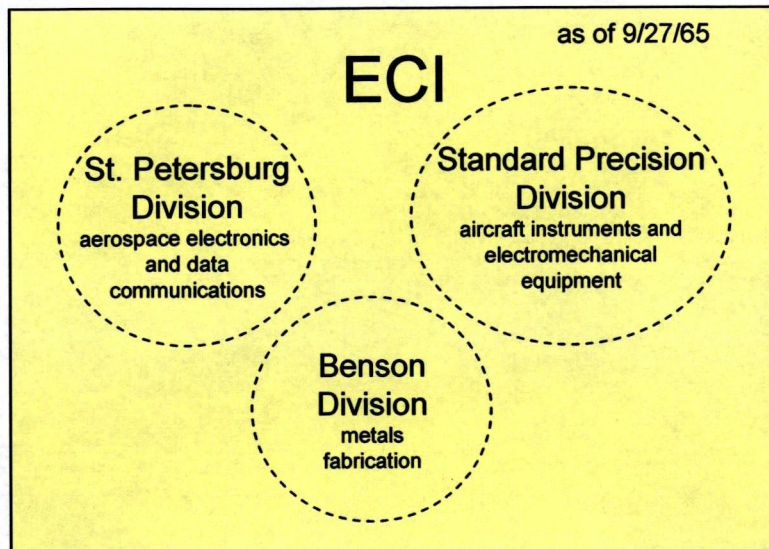
"No indemnification, hold harmless, or similar agreement or conveyance shall be effective to transfer from...any person who may be liable...under this section, to any other person the liability imposed under this section." 42 U.S.C. § 9607(e)(1).

- In other words, no prior "conveyance" by ECI can shift CERCLA liability away from ECI/Raytheon

*Harley-Davidson, Inc. v. Minstar, Inc.*, 41 F.3d 341, 342-343 (7<sup>th</sup> Cir. 1994) ("we agree with every other appellate court that has been called on to interpret it that it does not outlaw indemnification agreements, but merely precludes efforts to divest a responsible party of his liability.")



### III. NCR is not the Successor to ECI



ECI Media Guide 3/1/70

9/17/68

NCR becomes  
ECI's Parent  
by acquiring 95.2% of ECI  
shares from existing  
shareholders

#### Fundamental Principles:

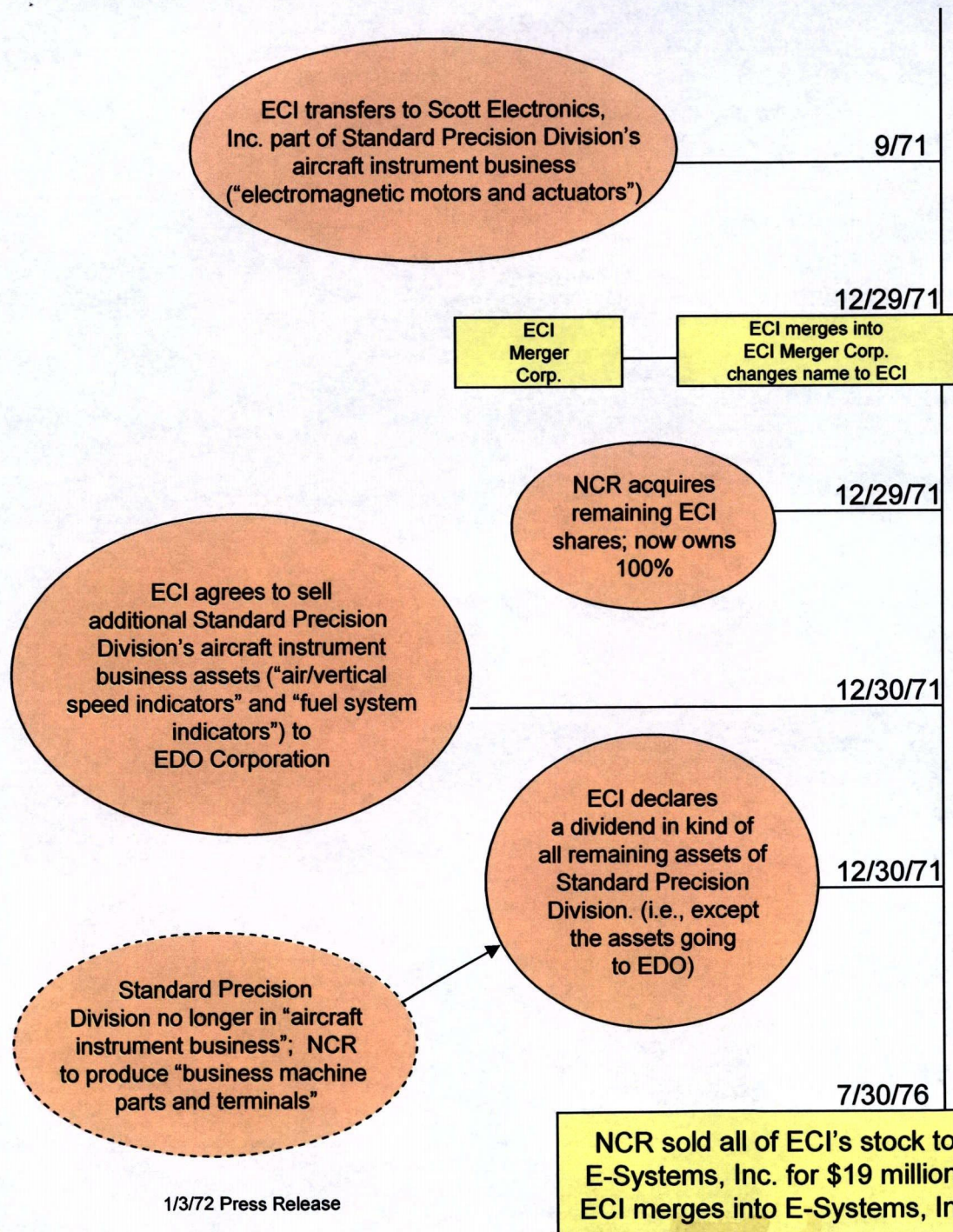
##### Divisions

"[A]n unincorporated division does not have a legal status independent of the corporation. 'A division of a corporation is not a separate entity but is the corporation itself.'" *General Dynamics Corp. v. United States*, 47 Fed. Cl. 514, 525 (2000).

##### Parent – Subsidiary Relationship

"It is a general principle of corporate law deeply ingrained in our economic and legal systems that a parent corporation (so-called because of control through ownership of another corporation's stock) is not liable for the acts of its subsidiaries." *United States v. Bestfoods*, 524 U.S. 51, 55-56 (1998).





## Fundamental Principles:

### Dividends in Kind

"Dividends may be paid in property if ... it is possible to distribute the property among the shareholders." 11 Fletcher Cyclopedia of Law of Private Corporations § 5356, p. 651 (rev. ed. 2003).

- There are no cases holding that a dividend in kind of assets or property creates successor liability in shareholders.

### Rule of Asset Transfers

The general rule is that "where one company sells or otherwise transfers all its assets to another company, the latter is not liable for the debts and liabilities of the transferor." 15 Fletcher Cyclopedia of the Law of Corporations, § 7122 (2008).

## Exception to General Rule of Assets Transfers

Exceptions to General Rule: mere continuation; de facto merger; assumption of liabilities.

Exceptions do not apply:

- ECI (now Raytheon) continued in existence after dividend
- no fraud (or suggestion of fraud) in dividend to NCR
- no express assumption of liabilities
- just small subset of ECI's assets included in dividend to NCR; not "all assets" as exceptions generally require
- NCR did not continue "aircraft instrument business," which ECI had discontinued prior to dividend